over 5,000, worked in senior centers; and 8.5 percent, over 4,000, worked in outreach and referral services.

At its February hearing on the food stamp and nutrition programs, the State director of aging in Ohio and the executive director of the Philadelphia corporation on aging told the Special Committee on Aging that they would have no way of replacing senior aids who are currently working in these programs.

Therefore, the loss of these community service jobs will threaten the ability of local agencies to continue to provide other services funded under the Older Americans Act.

In addition to these damaging facts, it is a serious human problem to neglect the important of employment opportunities to the economic security, the health, and the personal fulfillment of older Americans. Virtually every survey of older men and women indicates that a majority want to have the opportunity to continue some form of work. And an overwhelming majority—90 percent in the latest Harris poll released in November—favor abolishing the mandatory retirement age.

At the same time we are struggling to restore financial stability to the hard-pressed social security system, we are discouraging older workers who want to work from doing so.

The administration indicates training and employment should be the responsibility of the private sector. I agree that business and industry must play a far greater role in providing job opportunities for older people. But we face a long history of age discrimination, employment practices and pension policies which make it difficult—and sometimes impossible—for older workers to find jobs.

Merely saying that the private sector should play a greater role is not going to make it happen. We must educate employers so that they will recognize older workers for the essential resource they are to this Nation. As a matter of fact, with the declining number of younger workers projected for the decade ahead, we will need to have older workers stay on the job if we are to maintain our standard of living and improve our productivity.

One of the major contributions of the senior community services employment program is its demonstration of the significant contribution older workers can and do make to our society.

It is a program that has more than repaid the Federal Government's investment of tax dollars in benefits to our communities. I urge my colleagues to continue their strong support for the title V program and to join me in opposing its elimination.

AN OPEN LETTER TO THE PRESIDENT AND CONGRESS ON THE ECONOMY

Mr. RIEGLE. Mr. President, today in the Washington Post there is a full page advertisement, which is in the form of an open letter to President Reagan and Members of Congress, by the presidents of six major national organizations expressing their concern about the economy and urging an immediate effort to try to bring about an immediate course correction in economic planning.

I ask unanimous consent that the text of the ad be printed in the RECORD.

There being no objection, the advertisement was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 3, 1982]

AN OPEN LETTER TO PRESIDENT REAGAN AND MEMBERS OF CONGRESS: MARCH 3, 1982

(Joint Statement of: American Bankers Association, Mortgage Bankers Association of America, National Association of Home Builders, National Association of Mutual Savings Banks, National Association of Realtors®, and U.S. League of Savings Associations.)

Prolonged high interest rates are creating an economic and financial crisis in this country. In order to bring interest rates down, immediate action must be taken to reduce massive federal budget deficits. More than anything else, it is the spectre of an overwhelming volume of deficit financing which haunts housing and financial markets and poses the threat of economic and financial conditions not seen since the 1930s.

Given these circumstances, there is no alternative to: (1) slowing down all spending, not excluding defense and entitlement programs; and, if necessary, (2) deferring previously enacted tax reductions or increasing taxes. In order to have the necessary impact on financial markets, these actions should be taken prior to any increase in the ceiling on the federal debt.

Even with these actions, the restoration of financial stability and safety will be a prolonged process. It is necessary, therefore, to adopt immediate but temporary measures to address the critical problems of the industries which finance, market and produce housing for American families. These industries have unfairly borne the brunt of destructively high interest rates. Unless immediate and effective short-run measures are adopted, the continued devastation of these industries will, directly and indirectly, aggravate the federal budget deficit and greatly increase the prospect of a general economic and financial crisis.

In times of past crises in this nation, our political leaders have come together in a bipartisan manner to develop effective solutions in the common interest. Our nation is at such a time now. There will be no political winners if the Administration and the Congress fail to accommodate differences and cooperate in dealing with current serious economic problems. The threat to our nation demands prompt, effective and bipartisan action.

Llewellyn Jenkins, *President, American Bankers Association;* James F. Aylward, *President, Mortgage Bankers Association;* Fred Napolitano, *President, National Association of Home Builders;* Robert R. Masterton, *Chairman, National Association of Mutual Savings Banks;* Julio S. Laguarta, *President, National Association of Realtors, and* Roy G. Green, *Chairman, U.S. League of Savings Associations.*

THE INTELLIGENCE IDENTITIES PROTECTION ACT

Mr. DURENBERGER. Mr. President, the debate on the Intelligence Identities Protection Act of 1981 is both important and, in a sense, inevitable. We are proposing to write new criminal law, and we know better than to rush into this with any sense of celebration.

The crux of this debate is the matter of intent in section 601(c). The Intelligence Identities Protection Act as reported has a specific intent standard that many people find especially alluring. I can sympathize with their desire to insure that the bill we pass will not penalize all Americans for the sins of a few would-be destroyers of our intelligence services. Like my colleagues, I have listened to the points made by news media, as well as those of constitutional scholars and civil libertarians. I understand their concern.

When you look at the actual language, however, the differences between the bill as reported and the language of the Chafee amendment are limited. Both versions are designed to put a stop to the leaking of intelligence identities and to the disclosure of such identities by persons whose purpose in life is to expose our intelligence officers and agents. Both attempt to do this without infringing upon the rights of the rest of us.

If you look at the report language, moreover, you find that both versions list similar actions that would not be subject to criminal sanctions. And the Chafee version, too, has an intent standard, although it is somewhat different from that in the bill as reported.

The committee report that discusses the Chafee language, No. 96-896, was issued in 1980 by the Select Committee on Intelligence. There is no legislative history in this session on the Chafee language, with the exception of some remarks on the House floor that were not intended to create a formal record.

I would like, therefore, to make the rest of my points in the form of a colloquy with the distinguished Senator from Rhode Island. To the extent that these points might be inconsistent with the language of Report No. 97-201, they would, if Senator CHAFEE's amendment is approved, supersede such language.

Is it your intent that pages 18 and 21-23 of Report No. 96-896 shall constitute the legislative history of this amendment?

Mr. CHAFEE. Yes, it is.

Mr. DURENBERGER. Both Report No. 97-201 and Report No. 96-896 state that:

The standard adopted in section 601(c) applies criminal penalties only in very limited circumstances to deter those who make it

their business to ferret out and publish the identities of agents. At the same time, it does not affect the First Amendment rights of those who disclose the identities of agents as an integral part of another enterprise such as news media reporting of intelligence failures or abuses, academic studies of U.S. government policies and programs, or a private organization's enforcement of its internal rules.

Report No. 97-201, however, adds a caveat that was not in Report No. 96-896:

Provided it is not done so in the course of an effort to identify and expose such agents with the intent to impair or impede the foreign intelligence activities of the United States.

Am I correct in my understanding that this caveat is not required with the Chafee amendment, because of the nature of the intent requirement in that language?

Mr. CHAFEE. That is correct.

Mr. DURENBERGER. Under the Chafee amendment, there would be three elements of proof not found in sections 601 (a) or (b). The United States must prove

That the disclosure was made in the course of a pattern of activities, i.e., a series of acts having a common purpose or objective;

That the pattern of activities was intended to identify and expose covert agents; and

That there was reason to believe such activities would impair or impede the foreign intelligence activities of the United States.

Note that it is the pattern of activities that must be intended to identify and expose covert agents. This more objective requirement makes it clear that the defendant must be engaged in a conscious plan to seek out undercover intelligence operatives and expose them in circumstances where such conduct would impair U.S. intelligence efforts. Report No. 96-896 had some important language regarding this conscious intent:

It is important to note that the pattern of activities must be intended to identify and expose such agents. Most laws do not require intentional acts, but merely knowing ones. The difference between knowing and intentional acts was explained as follows in the Senate Judiciary Committee report on the Criminal Code Reform Act of 1980:

As the National Commission's consultant on this subject put it, "it seems reasonable that the law should distinguish between a man who wills that a particular act or result take place and another who is merely willing that it should take place. The distinction is drawn between the main direction of a man's conduct and the (anticipated) side effects of his conduct." For example, the owner who burns down his tenement for the purpose of collecting insurance proceeds does not desire the death of his tenants, but he is substantially certain (i.e., knows) it will occur.

A newspaper reporter, then, would rarely have engaged in a pattern of activities with the requisite intent "to identify and expose covert agents." Instead, such a result would ordinarily be "the (anticipated) side effect of his conduct."

This crucial distinction between the main direction of one's conduct and the side-effects that one anticipates but allows to occur, because of one's other goals, forms an important safeguard for civil liberties. The amendment before us would bring that safeguard into play, would it not?

Mr. CHAFEE. Yes it would, Senator DURENBERGER, and that is one reason why I believe that my version is actually better for civil liberties than the bill as reported out of committee.

Mr. DURENBERGER. Because the intent standard in this amendment is an intent "to identify and expose covert agents," rather than an intent "to impair or impede the foreign intelligence activities of the United States," it is crystal clear that the fact that a journalist had written articles critical of the CIA which did not identify covert agents could not be used as evidence that the intent standard was met. Is that not correct?

Mr. CHAFEE. That is indeed correct, and it is a major reason why I introduced this language in 1980, to replace the "intent to impair or impede" standard that the CIA had originally proposed. The Department of Justice was very concerned that a subjective intent standard could have a chilling effect on public debate regarding intelligence, and I shared this concern.

The intent standard in the bill as reported by the Judiciary Committee last year is somewhat different from that in the bill as introduced in 1980, but I still feel that my language establishes more clearly than theirs the crucial point that a person's views regarding intelligence policy cannot be used to convict him. His or her acts are what matter.

Mr. DURENBERGER. Both Report No. 96-986 and Report No. 97-201 contain some very important language indicating what activities are—and are not—meant to be considered criminal acts:

To meet the standard of the bill, a discloser must be engaged in a purposeful enterprise of revealing names—he must, in short, be in the business of "naming names."

The following are illustrations of activities which would not be covered:

An effort by a newspaper to uncover CIA connections with it, including learning the names of its employees who worked for the CIA.

An effort by a university or a church to learn if any of its employees had worked for the CIA. (These are activities intended to enforce the internal rules of the organization and not identify and expose CIA agents.)

An investigation by a newspaper of possible CIA connections with the Watergate burglaries. (This would be an activity undertaken to learn about the connections with the burglaries and not to identify and expose CIA agents.)

An investigation by a scholar or a reporter of the Phoenix program in Vietnam. (This would be an activity intended to investigate a controversial program and not to reveal names.)

Am I correct in my understanding that the approval of this amendment would in no way change the fact that it is the intent of Congress to exclude such activities from the coverage of this act?

Mr. CHAFEE. You are correct.

Mr. DURENBERGER. Report No. 96-896 emphasizes that:

The government, of course, has the burden of demonstrating that the pattern of activities was with the requisite intent to identify and expose covert agents. The government's proof could be rebutted by demonstrating some alternative intent other than identification and exposure of covert agents.

Looking at recent cases, there have been a number of press stories naming persons allegedly involved in Wilson and Terpil's activities with Libya. It would seem to me that such stories would be protected, even though they might identify covert agents, because their intent is to investigate possible involvement of CIA personnel in illegal—or at least highly controversial—activities.

Similarly, David Garrow's recent book, "The FBI and Martin Luther King, Jr.: From 'Solo' to Memphis," purports to name some covert agents. Now I am not thrilled by that act on Garrow's part, and I am not sure that he had to do it. But he was sure he had to, and clearly his intent was to explain what drove the FBI to wiretap Martin Luther King, rather than to identify and expose covert agents.

In both of these cases, the proposed amendment would not threaten the authors, because the exposure of any covert agents would be the anticipated side effect of their disclosures, rather than the main direction of their efforts. Is that not the case?

Mr. CHAFEE. You state the case correctly, Senator DURENBERGER, although I, too, am disturbed by Mr. Garrow's book.

Mr. DURENBERGER. In fact, this amendment would leave unchanged the rights of all sorts of people to say what they want, so long as they did not engage in such a pattern of activities intended to identify and expose covert agents.

Thus, gadflies and radicals, as well as more responsible individuals, may continue to engage in all manner of investigations to try to prove this or that about the CIA. So long as the main direction of their conduct is those investigations, the Government would be hard put to demonstrate that their intent was to identify and expose covert agents, is that right?

Mr. CHAFEE. That is right, and it is an important point. We are not merely protecting our friends who write for the Providence Journal or the Minneapolis Tribune. If this amendment is approved, nobody need fear prosecution other than those in the business of naming names.

Mr. DURENBERGER. Report No. 96-896 goes on to state that:

The government must also show that the discloser had reason to believe that the activities would impair or impede the foreign intelligence activities of the United States. For example, a reporter could show that by printing a name of someone commonly known as a CIA officer he could not reasonably have expected that such disclosure

would impair or impede the foreign intelligence activities of the United States.

This is an important point, for some people might think that it would suffice for the Government to claim that such a disclosure would impair or impede its foreign intelligence activities. But the word reasonably makes clear that there is room for a discloser to argue that the Government's claim was unjustified.

A Government warning to a news reporter that a particular intended disclosure would impair or impede our foreign intelligence activities might prevent the reporter from later arguing that such a consequence never occurred to him. But he could still contest the logic of that warning and use that as a defense in any legal proceeding, could he not?

Mr. CHAFEE. Yes, he could. The reason to believe standard does not mean that the Government can simply assert that a disclosure will impair or impede foreign intelligence activities. As report No. 96-896 says:

A discloser must, in other words, be in the business, or have made it his practice, to ferret out and then expose undercover officers or agents where the reasonably foreseeable result would be to damage an intelligence agency's effectiveness.

Mr. DURENBERGER. Mr. President, I thank the distinguished Senator from Rhode Island for his patience and cooperation. I believe that our colloquy has demonstrated my basic point, that this bill will be limited in its focus, as much in the amended version as it is in the version reported out of committee.

In light of that essential fact, I see no bar to our adopting the language that the administration clearly prefers. They feel that the version passed by the Select Committee on Intelligence in 1980 will do a better job.

I, in turn, believe that Senator CHAFEE's careful drafting and his participation in this colloquy will go far to insure against the sort of abuses that some people fear will occur.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

AFGHANISTAN DAY

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate Joint Resolution 142, which the clerk will state by title.

The bill clerk read as follows:

A joint resolution (S.J. Res. 142) to authorize and request the President to issue a proclamation designating March 21, 1982, as Afghanistan Day, a day to commemorate the struggle of the people of Afghanistan against the occupation of their country by Soviet forces.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Pennsylvania (Mr. SPECTER).

Mr. SPECTER. Mr. President, Senate Joint Resolution 142, "to authorize and request the President to issue a proclamation designating March 21, 1982, as Afghanistan Day, to protest the occupation of their country by Soviet forces," represents a bipartisan effort by the U.S. Congress with the international cooperation of the North Atlantic Assembly.

My personal participation in this matter began when I attended the North Atlantic Assembly meeting in Munich last October. I was requested, along with Congressman ELLIOTT LEVITAS of Georgia, to take the lead in sponsoring a resolution declaring March 21, 1982 as Afghanistan Day. That date was chosen because it is the day which Afghan people traditionally celebrate their New Year.

I was pleased to join in this effort because it is my view that the situation in Afghanistan presents a unique opportunity for the freedom-loving nations of the world to unite in condemning Soviet aggression.

At the present time, Soviet insurgence and Soviet adventurism is taking place in many nations of the world, but in most situations the actual level of Soviet influence is subject to substantial dispute. The underlying factual issue—stated simply, "Who is right and who is wrong?" is not raised in Afghanistan, which represents a uniquely clear-cut situation.

We are all aware of conditions in Poland where debate still rages as to the extent of Soviet involvement. There are many other countries in the world where Soviet influence is suggested to be particularly prevalent, such as El Salvador, Cuba, Guatemala, Angola, Zimbabwe, Libya, Chad, Jordan, Syria, Iraq, North Korea, Laos, Cambodia, and Vietnam.

But, unlike the Afghan situation, in many of these countries, there is substantial controversy as to whether the Soviets are conclusively wrong in their actions. And, while many of us feel that they are wrong in many, if not all, of those situations, no one can deny the gross impropiety of the Soviet action in Afghanistan.

Soviet aggression in Afghanistan led the United Nations General Assembly to pass a resolution on October 18, 1981, by the overwhelming vote of 116 to 23, with 12 abstentions, calling for "the immediate withdrawal of the foreign troops from Afghanistan." And, on December 16, 1981, the European Parliament acted to commemorate March 21, 1981, as Afghanistan Day, with 237 of the 434 members signing the resolution.

This exemplifies the kind of solid support which, obviously, can be mustered on an issue which is as clear cut and as plain as the Soviet invasion of Afghanistan. This is the kind of support that we should utilize, therefore, to build upon with as many nations of the world as possible.

It was over 2 years ago, on December 24, 1979, that the Soviet Union launched a full-scale invasion of Afghanistan. Within 72 hours, Soviet troops had successfully executed a violent coup in Kabul, overthrowing the independently oriented Amin and his regime. The Soviets replaced the Amin Government with the puppet regime of Babrak Karmal. Rarely in recent history has the world witnessed such harsh and inhumane aggression against any nation or its people.

In other parts of the world, the situations are more ambiguous, as already noted, than that which exists in Afghanistan. In Afghanistan, the brutality of Soviet oppression is unrivaled throughout the world.

What is most amazing about the tragedy in Afghanistan, however, has been the powerful and heroic resistance of the Afghan freedom fighters. None of the Soviet tactics—neither the search and destroy missions, the massacres, the napalm, nor the explosive mines—have diminished the resistance of the Afghan freedom fighters. Through the installation of over 80,000 troops, the creation of a puppet government and active use of terrorist tactics, the Soviet Union has maintained a death grip on Afghanistan, and yet the courageous Afghan freedom fighters continue to struggle against all odds.

Soviet brutality has exacted a great toll on the Afghan people. Starvation and massacre have taken many thousands of lives. And, by this point, over 2,500,000 Afghans have fled their homeland to become refugees in Pakistan.

We cannot know when this tragedy will end. We can only hope that with the passage of time, the Afghan people will be successful in their historic struggle to regain control of their homeland and live in peace.

With the passage of this resolution, we hope to send a clear message around the world. It is my deep hope that Afghanistan Day will be recognized by the Soviets as notice that such aggression will not be tolerated and can only damage the interests of the Soviets themselves.

By joining together to pay a special tribute to the tenacious Afghan freedom fighters, who continue to fight relentlessly and courageously for peace, we convey our support for all people around the world who fight against the bonds of tyranny and oppression.

Mr. GRASSLEY. Mr. President, as a cosponsor of Senate Joint Resolution 142, I am pleased to see the Senate take such prompt action to consider the measure, which would authorize the President to declare March 21, 1982, as Afghanistan Day. This would interface with the European Community's designation of March 21 as Afghanistan Day and, with the cooperation of Third World countries, would

Section 4 states that it is the sense of Congress that this act is consistent with and in accord with the General Agreement on Tarriffs and Trade (GATT).

I ask unanimous consent that the text of the bill to be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2167

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as the "Unfair Foreign Competition Act of 1982."

SEC. 2. Section 1 of the Clayton Act (15 U.S.C. 12) is amended by inserting after the words "nineteen hundred and thirteen;" the words "section 801 of the Act of September 8, 1916, entitled 'An Act to raise revenue, and for other purposes' (39 Stat. 798; 15 U.S.C. 72);".

SEC. 3. Section 801 of the Act of September 8, 1916, entitled "An Act to raise revenue, and for other purposes" (15 U.S.C. 72) is amended to read as follows:

"(a) It shall be unlawful for any person to import, assist in importing, or sell, or cause another to import, assist in importing, or sell within the United States any article manufactured in a foreign country at a purchase price less than the foreign market value (or, in the absence of any such value, the constructed value) prevailing at the time, if the reasonably foreseeable effect of such importation or sale of such article is—

"(1) material injury to industry or labor engaged in commerce in the United States; and,

"(2) the prevention, in whole or in part, of the establishment, modernization or expansion of Industry in the United States.

"(b) Any person who knowingly violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, upon conviction thereof, shall be liable to imprisonment for a term not to exceed one year, or a fine not to exceed $1,000,000, or both.

"(c)(1) Any person who has been injured in his business or property by reason of any violation of, or conspiracy to violate this section, may sue in the district court of the United States for the district in which the defendant resides, transacts business, is found or has an agent, without respect to the amount in controversy.

"(2) In the case of any suit filed under paragraph (1), the court shall have jurisdiction to decide such suit and may issue a temporary or permanent injunction or a temporary restraining order prohibiting the importation or sale of any articles which have been or will be imported or in violation of subsection (a) of this section.

"(3) Any plaintiff prevailing in a suit filed under paragraph (1) of this subsection shall, upon a finding of injury under subsection (a), recover threefold the damages sustained, any other equitable relief as may be appropriate, and the cost of the suit, including reasonable attorney fees.

"(d) The standard of proof is any action filed under subsection (c) is a preponderance of the evidence. Upon a prima facie showing that there has been a violation of subsection (a) or upon preliminary or final determination by the International Trade Commission or administering authority that is affirmative under sections 703, 705, 733, or 735 of the Tarriff Act of 1930 (19 U.S.C. 1671b, 1671d, 1673b and 1673d) and which shall be considered a prima facie case for purposes of this section, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown that such articles have not been imported or sold at less than foreign market value, the Court may issue an appropriate order including any penalty or sanction authorized by subsection (c).

"(e) If, during the course of any proceeding under this section, the court determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned be excluded from entry or sale in the United States, pending completion of the suit.

"(f) Whenever it shall appear to the court before which any proceeding under this Act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served and enforced in any judicial distirct of the United States.

"(g) If a defendant, in any proceeding brought under subsection (c) of this section in any court of the United States, fails to comply with any discovery order, or other order or decree of such court, the court may enjoin the further importation into the United States, sale, or distribution in interstate commerce within the United States, by such defendant of articles which are the same as, or similar to, those articles which are alleged in such proceeding to have been sold or imported in violation of the provisions of subsection (a) of this section, until such time as the defendant complies with such order or decree, or may take any other action authorized by law, including entering judgment for the plaintiff.

"(h) The confidential or privileged status accorded to any documents, comments or information by law shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, may accept depositions, documents or affidavits under seal, and may disclose such material under such terms and conditions as it may order.

"(i) Any suit filed under subsection (c) shall be advanced on the docket and expedited in every way possible.

"(j) For the purpose of construing the term 'foreign market value', the court shall apply the definition of such term contained in the Anti-dumping Act of 1921 (19 U.S.C. 160–173) and the Tariff Act of 1930 (19 U.S.C. 1671 et. seq.). To the extent that any governmental or other subsidy provided to a manufacturer or producer is not included in the foreign market value or constructed value, then the amount of such subsidy shall be added on to the foreign market value or constructed value.

"(k) The acceptance by any foreign manufacturer or exporter of any right or privilege conferred upon him to sell his products or have his products sold by another party in the United States shall be deemed equivalent to an appointment by the foreign manufacturer or exporter of the Commissioner of Customs to be the true and lawful attorney upon whom may be served all lawful process in any action or proceeding relating to the foreign manufacturer or exporter under this section.

"(l) The action brought under subsection (c) shall be barred unless commenced within four years after the cause of action accured.

SEC. 4. It is the sense of the Congress that the provisions of this Act are consistent with and in accord with the General Agreement on Tariffs and Trade (GATT).

AGENT IDENTITIES BILL

Mr. SPECTER. Mr. President, during the debate on the agent identities bill, I did not have an opportunity to present my views during the time allotted. At this time, I should like to present the statement of my position in this matter, which I will amplify when the agent identities bill is before the Senate for further debate next week.

Mr. President, all Senators share a strong desire to protect the identities of U.S. intelligence agents because disclosures harm the intelligence agencies and can harm the agents themselves. All Senators want to enact a law that, consistent with constitutional protections of fairness in criminal justice and of freedom of the press, will effectively deter systematic disclosures and will surely punish the disclosures. Disagreement arises, however, over whether requiring proof of intent to impair U.S. intelligence activities or only reason to believe impairment will occur will better assure conviction of the guilty and protection of professional journalists from the chilling effect of possible prosecution.

Senator CHAFEE, who has long championed the cause of protecting agents' identities, has proposed an amendment to the Intelligence Identities Protection Act of 1981 (S. 391) to remove the requirement of intent which was inserted by the Judiciary Committee. As a member of the Judiciary Committee, I know that the insertion was made to protect the media. Senator CHAFEE, however, believes that the intent standard "substantially weakens the bill." His amendment, like the bill passed last fall by the House of Representatives, would substitute a lower standard of proof derived from the civil law of negligence—"reason to believe."

Its sponsors believe the amendment is necessary to successful prosecution of those "in the business of naming names" and do not believe the amendment would threaten the press. I disagree.

In my opinion, as a former prosecutor, the reason to believe standard is inappropriate, undesirable, and unnecessary. It may also be unconstitutional.

In our system of justice, criminal cases have traditionally required proof of criminal intent. That practice, which has been generally followed in this country for nearly 200 years, has proven to be both realistic and fair. The practice is workable even though we cannot get inside the accused's head to examine his intentions because of two well established legal doctrines. First, the accused is deemed to intend the "natural and probable consequences" of his actions. Second, his intent need not be proved by direct evidence, such as his statements, but may be inferred from his actions. Juries are instructed by the court that specific intent "may be determined

from all the facts and circumstances surrounding the case." Even where the accused proclaims that his intent was innocent, juries often discount such statements and infer the requisite intent. On the basis of considerable personal experience in such cases, I know that the doctrine of inferred intent works and works well.

Requiring intent also furnishes an essential element of the fundamental fairness that characterizes our criminal proceedings. The requirement serves to protect innocent individuals from the hardship of unnecessary trial and the risk of unjust conviction. The lower standard of reason-to-believe, by contrast, imposes legal liability despite innocent intentions whenever the person should have foreseen that harm might result from his actions. In the context of agents' identities, this means that an individual motivated solely by a desire to stop illegal practices who discloses the identity of the offending agent to anyone outside of certain Government agencies could be sent to prison because he should have anticipated that his disclosure would make future recruitments or cooperation of agents more difficult. Indeed, such impairment might well follow from virtually any disclosure, even one for a most laudatory purpose.

Too broad a range of cases would be included by a standard that the actor would have reason to believe that identifying an intelligence agent would cause such impairment. As Senator CHAFEE himself observed in the debate last Thursday, "Any reasonable person would know that by naming names you are going to impair the foreign intelligence activities of the United States." If that is so, then the reason-to-believe standard is no standard at all for it is met automatically and without regard to the purpose or circumstances of the disclosure. Accordingly, the reason-to-believe standard is inappropriate in a felony statute.

If the criminal law should not punish a person with innocent intentions, then the amendment compounds the inherent unfairness because it would apply in a first amendment context. Passage of the Chafee amendment could subject a reporter or broadcaster, as well as the editors and all officers involved in reviewing the story, risk of criminal prosecution. No matter how innocent everyone's intentions, how necessary disclosure of the name was to the credibility or effectiveness of the story or how outrageous or illegal the conduct of the agent, criminal prosecution would be possible.

No doubt, the Justice Department would decline to prosecute such a case. But a violation certainly would have occurred.

Some Senators have argued that reporters in such circumstances are not covered by the bill because of another provision which requires proof that the disclosure was made "in the course of a pattern of activities intended to identify and expose agents." Senator CHAFEE, for example, said in the debate, "It is not one disclosure, it is a pattern of activities." The definition given to "a pattern of activities," however, is several actions with a "common purpose." Such a pattern would be found in the following hypothetical circumstance.

A reporter separately interviews six sources about an unidentified CIA agent allegedly involved, with agency approval, in drug trafficking overseas. In each interview, the reporter seeks clues to the person's identity. He succeeds in piecing together various facts and then writes a story naming only this one agent. Since the six interviews—a reporter's normal and lawful pursuit—all had the common purpose of gathering facts for a story about the agent, they form a pattern of activities and undeniably they were intended to identify and expose this agent. Thus, in fact, the amended bill would not require a series of disclosures over a period of time, but only one disclosure in one story that could result from activities as innocuous as news interviews.

The mere possibility of prosecution in such circumstances might have a very chilling effect on the press. After all, whether or not with good reason, members of the press may be reluctant to rely on the grace of the Justice Department not to prosecute them even though they would have violated the terms of the act. But the discomfort of the press is not where the potential harm ends. Chilled by the act, the press might become less vigorous, less confident and therefore less informative. The public would be the loser.

Precisely to prevent such chilling, the courts closely scrutinize the constitutionality of any such criminal statute. If S. 391 is amended, the courts might well strike it down as unconstitutional. In that event, my colleagues and I might find ourselves engaged in the same debate 5 years hence. We might again be considering S. 391 as reported by the Judiciary Committee because in that form the bill is not subject to serious constitutional challenge. It is the amendment that creates the constitutional infirmity.

A workable bill 5 years from now is too late; our intelligence agents need and deserve such a bill right now. In fact, all parties to the debate agree on the need for immediate action on a bill that will survive legal challenge, that will reach those whose evil deeds led to the bill being proposed, and that will result in successful prosecutions of those trying to impair U.S. intelligence activities. I would hope they would also agree that the bill must do so without impairing freedom of the press.

In view of the risks entailed in the Chafee amendment, what is the overriding need that justifies taking these risks? The administration, the Justice Department and the CIA have consistently indicated a strong preference for the reason to believe standard which they view as more effective. President Reagan recently wrote Senators, stating—

> . . . Attorney General Smith and I firmly believe that the (Chafee version) is far more likely to result in an effective law that could lead to successful prosecution.

In theory, they may be correct, but, with all due respect, I believe in practice the amendment is unlikely to improve the prospects for successful prosecution for these three reasons:

First. Indictments would be less likely because of increased "graymail";

Second. Trials would be longer and more complicated and confusing, putting the CIA, instead of the accused, on trial as to the adequacy of its efforts to protect intelligence indentities; and

Third. Appeals might involve greater delay and risk of reversal.

The amendment is entirely unnecessary since the bill, as reported, will reach all those it needs to reach. Only legitimate journalists would be beyond its reach, but the CIA has always been very clear about its total lack of interest in prosecuting reporters. It is concerned with those persons who publish items like the Covert Action Information Bulletin. In my judgment such persons can be successfully prosecuted under the intent standard since their intent is apparent from the face of their publications. I have met twice with Director Casey and know that he finds the committee version of the bill acceptable.

What if their successors try to mask their intention by proclaiming their purpose to be not impeding, but improving U.S. intelligence activities? In the debate, Senator CHAFEE stated that such protestations would create "a loophole big enough to drive a truck through." Juries, in my experience, are not so easily tricked. Rather, they are skeptical of what the accused says and looks to what he did in assessing intent.

Certainly, no actual case has been cited to which could not be brought or was lost because intent could not be established while reason to believe could. Moreover, I have been advised by former Justice Department officials that in most intelligence disclosure cases what prevents prosecution is not insufficient proof of intent but rather what has become known as graymail. Graymail occurs when the defense is able to compel sufficient revelation of intelligence secrets that the cost of the prosecution is viewed as exceeding the benefits. Consequently, most such investigations are terminated without a prosecution being initiated even though ample proof exists. Sometimes the defense is entitled by law to introduce the sensitive information at trial. More often, however, defense attorneys are merely entitled to receive the information as part of their pretrial preparation, known as discovery.

Unintentionally, the amendment would probably increase the scope of the pretrial discovery that the court would order. For instance, the defense could assert that in view of the apparent absence of harm to those agents whose identities were previously revealed, their client, rather than having reason to believe impairment would follow his disclosure, instead had reason to believe it would not. Thus, the defense would seek to discover all CIA documents on the 2,000 persons previously identified as intelligence agents in order to determine what effect, if any, the public revelation of identity had on their safety and productivity. In response, the CIA would deny the discovery requests even though the prosecution could not then proceed.

The so-called graymail statute enacted by Congress does not solve this problem for it did not—and could not—restrict the scope of discovery. That depends on the elements of the offense charged and the nature of the Government's proof. All the statute did was prevent surprise use of classified information at trail and expressly authorize the trial judge to admit into evidence documents from which sensitive information had been deleted and also to use summaries in place of the actual documents.

The bill as reported does not present any problem of discovery. Under the intent standard, CIA documents on the 2,000 agents previously identified would not be discoverable because the agents' fate is entirely relevant to the accused's intent. Even if the dangers of pretrial discovery could somehow be circumvented, the danger of undue disclosure of its secrets at trial would probably cause the CIA to demand that the Justice Department abruptly terminate the prosecution either through a plea bargain generous enough to entice the defendant or by outright dismissal of all charges.

Senators supporting the amendment have also suggested that the reason-to-believe standard would avoid resorting to highly intrusive investigative techniques such as wiretapping and inquiring at trial into the accused's political opinions. The prediction that the intent standard would require such intrusions again underestimate the sophistication of juries. Private telephone conversations of the publishers of Covert Action Information Bulletin are hardly necessary. Their public statements—even perusal of the publications themselves—leaves no doubt whatever about their intent. In any event, the intrusiveness of investigation under either standard will depend primarily on the judgment and policies of Justice Department officials.

If the bill, as reported by the Judiciary Committee, in fact makes for better prosecutions, then why do the CIA and the Justice Department strongly prefer the Chafee version? Perhaps the appeal of the Chafee version is that it appears tougher. But in reality, criminal statutes derive their effectiveness from their capacity to deter future misconduct. Generally, deterrence comes not from statutes which look stern, but ones that are enforced. Those misguided persons who seek to expose our intelligence agents are the least likely to be dissuaded merely by enactment of a new law. What would deter them would be seeing someone go to prison for naming names. In similar fashion, the morale of our agents would be raised not by enactment of a tough looking statute but by enforcement of a realistic statute.

Deterrence, furthermore, only continues as long as convictions are sustained on appeal. If amended, the statute not only might by invalidated but its application in particular cases might be reversed. A jury's finding on intent normally cannot be overturned by an appellate court unless the record of the trial is entirely devoid of any evidence on which the jury could have based its determination. Reason to believe, however, is a standard that permits the courts to second-guess the jury and reverse its finding if the appellate judges disagree.

Supporters of the amendment take comfort from the fact that the phrase "reason to believe" appears in a handful of criminal statutes, including the Espionage Act, that have been upheld by the courts. Three crucial distinctions have been overlooked in this regard. First, these statutes focused on surreptitious transfers of secret information, while S. 391 concerns public disclosures. Second, no appellate case has been found affirming a conviction based only on reason to believe. In most of the statutes the prosecution may prove either intent or reason to believe. Review of the cases suggests that the evidence proved intent. Third, the reason to believe standard is used very differently in these statutes than in S. 391. Typically, the defendant must have the normal criminal intent when he passes the secret information. Reason to believe comes in on the issue of what the receiver will do with the information. If the defendant has reason to believe the foreign power will use it against the United States, he is guilty. Thus, reason to believe has been used to describe the defendant's state of mind as to what third parties may do, not, as in this amendment, as to what he himself is doing.

In short, my review of the Intelligence Identities Protection Act has led to the firm conclusion that, as reported by the Judiciary Committee, it would provide: Better protection for agents' identities because it is more prosecutable; better protection of fundamental fairness because, like comparable felony statutes, it requires criminal intent; and better protection of freedom of the press because it removes the threat of possible prosecution.

ORDER OF PROCEDURE

Mr. SPECTER. Mr. President, I thank the distinguished Senator from West Virginia. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, how much time does the distinguished Senator from Pennsylvania have remaining under his order?

The PRESIDING OFFICER. He has 8 minutes remaining.

Mr. ROBERT C. BYRD. I ask unanimous consent that I may have control of that time, also.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business.

ANTI-SEMITIC INCIDENTS UP FOR THE THIRD YEAR

Mr. SASSER. Mr. President, I would like to share with my colleagues an article which appeared in the Anti-Defamation League of B'nai B'rith's February bulletin.

One would have hoped that after the disturbances of the past few years in this country the voices of hate would have been stilled. This is obviously not the case. The report clearly shows that there are still those in our society who would deny to some of our citizens that basic right which is one of the foundations of our country—freedom of religious practice.

According to the League's report, the number of anti-Semitic incidents doubled between 1980 and 1981—from 377 to 974. The report also reviews the measures which have been taken by various States to punish those who would tamper with our liberties.

Last year, here in the Senate, I introduced legislation which would make it a Federal crime to damage any cemetery or a building used for religious purposes (S. 966). The League's report points up the need for legislation to enable the full resources of law enforcement to be brought to bear on those who would violate one of our citizens' most fundamental rights.

I ask my colleagues to join with myself, and Senators SIMPSON, SARBANES, BOSCHWITZ, and METZENBAUM who are cosponsors of this measure in working for its early passage.

Mr. President, I ask unanimous consent that the article from the Anti-Defamation League's bulletin be printed in the RECORD in full.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the ADL Bulletin, Feb. 1982]

ANTI-SEMITIC INCIDENTS UP FOR THE THIRD YEAR

The number of reported anti-Semitic incidents in 1981 was more than double 1980,

according to the Anti-Defamation League's annual national audit. It was the third straight year that the episodes more than doubled.

In addition to the increase in anti-Semitic vandalism against Jewish institutions and private property, such as homes and stores, and against public property (swastikas or anti-Jewish epithets scrawled on buildings, for example), the audit also revealed a substantial increase in bodily assaults against Jews as Jews, and in mail or phone threats to Jews and Jewish institutions.

At the same time, there were signs that American society is reacting with growing determination against vandals motivated by bigotry and religious prejudice.

There were 974 episodes of anti-Semitic vandalism reported to ADL's 27 regional offices around the country. These took place in 31 states and the District of Columbia. In 1980, there were 377 reported in 28 states and the District of Columbia. In 1979, there were 120 episodes; in 1978, there were 49.

The number of assaults, mail and phone threats, and harassments of Jews and Jewish institutions reported in 1981 was 350, compared with 112 in 1980.

As in 1980, most reports of incidents of anti-Semitic vandalism in 1981 came from the states of New York (326), California (150), New Jersey (94) and Massachusetts (59)—roughly 65 percent of the total nationwide.

The Northeast, with roughly half of the reported incidents, was once again the geographic area with the greatest number of episodes.

The more serious offenses—arson, attempted arson, bombings and attempted bombings—numbered less than three percent of the total incidents reported in 1981. The other 97 percent consisted of swastika daubings, anti-Jewish graffiti, and similar types of vandalism.

Desecrations of Jewish cemeteries increased from five in 1980 to 15 in 1981.

As in 1980, the overwhelming majority of those arrested in connection with the 1981 episodes of overt anti-Semitic vandalism, assaults, threats and harassments were 20 years of age or under.

During 1981, ADL received reports that 73 individuals had been arrested in connection with 39 episodes of anti-Semitic vandalism and that 62—85 percent—were 20 or under. The remaining 11 were adults, of whom six were arrested in connection with a single episode in Nashville, TN. This involved an abortive plot, allegedly hatched by persons having Ku Klux Klan or neo-Nazi affiliations, to bomb a synagogue. In only one other episode was there evidence of activity by organized hate groups—an episode in Indiana in which one of two men arrested was affiliated with a Klan group.

POLICE, LAWMAKERS REACT

There are signs that American society is reacting to the proliferation of bias crimes. There is evidence of stepped-up activity by law enforcement authorities to combat offenses motivated by religious, racial and ethnic prejudice. This has been seen in the tristate area of New York, New Jersey and Connecticut, scene of 44 percent of the anti-Semitic incidents of vandalism reported in 1981, and in other states which have embarked on closer monitoring.

In the last year, moreover, there have been indications of greater concern for the victims and targets of these crimes. In New York City, borough police commanders are now mandated to make personal visits to all victims and targets of offenses that are motivated by bigotry.

During 1981, ADL sponsored security conferences in communities from coast to coast, designed to bring officials of Jewish institutions together with law enforcement experts to discuss and plan proper security procedures.

Eight states enacted statutes last year aimed at dealing with the problem of religiously-motivated vandalism. These states—where almost two-thirds of the reported anti-Semitic episodes occurred—were: Arizona, California, Maryland, New Jersey, New York, Oregon, Rhode Island and Washington.

Generally, the statutes can be divided into two categories. In the first group are laws providing increased criminal penalties for those found guilty of vandalizing cemeteries and houses of worship.

HOW YOUR STATE RANKED

State	Anti-Semitic vandalism 1981	Anti-Semitic vandalism 1980	Harassments, threats, and assaults—1981
1—New York	326	120	108
2—California	150	27	17
3—New Jersey	94	69	16
4—Massachusetts	59	34	14
5—Maryland	51	1	8
6—Pennsylvania	50	1	9
7—Michigan	29	21	23
8—Illinois	28	12	9
9—Minnesota	26	10	48
10—Virginia	25	8	7
11—Florida	24	2	8
12—Rhode Island	15	12	9
13—Georgia	14	1	14
14—Connecticut	12	8	6
15—Missouri	11	8	3
16—Indiana	10	0	1
17—North Carolina	9	9	8
18—Nebraska	7	2	2
19—Arizona	5	6	16
20—Ohio	5	2	5
21—Colorado	4	4	6
22—Washington	4	2	5
23—Nevada	3	1	0
24—Texas	3	1	2
25—Wisconsin	3	4	2
26—Alabama	2	1	0
27—South Carolina	2	0	1
28—Louisiana	1	0	0
29—Oklahoma	1	0	0
30—Tennessee	1	3	0
31—Iowa	0	0	1
32—D.C.	0	1	2
Totals	974	377	350

The other group of new laws requires a showing of specific criminal intent to harass, intimidate or terrorize an individual on the basis of the individual's race, religion or national origin before a conviction can be obtained. These will likely be harder to enforce and may result in fewer convictions.

Other aspects of the new statutes provide for: the creation of a state commission to study religious, racial and ethnic harassment (Rhode Island); the collection and analysis of data relating to incidents directed against racial, religious or ethnic groups (Maryland); civil remedies for victims of certain forms of religious vandalism (New York, Oregon and Washington), and increased penalties for cross burning (Maryland).

ADL has developed a model religious vandalism law to provide those states that do not have such legislation with a single, comprehensive, constitutionally sound approach to this problem.

The model statute's first and second sections create penalties for vandalism against houses of worship, cemeteries, schools and community centers, and also for committing certain crimes "by reason of the race, color, religion or national origin of another person." In both cases, the statute leaves the severity of the penalties up to individual state legislatures, and assumes that when two or more persons agree to engage in these types of crimes, it would constitute criminal conduct under the state's general conspiracy law.

The third section of the ADL bill gives victims of the crimes described in the first two sections the right to sue for damages and attorney fees and makes parents liable for their children's actions. These forms of relief have a significant deterrent value and provide incentive for victims to bring civil suits.

CAUSE OF ANGUISH

While the 1981 audit records 974 incidents in a nation of 220 million people, the real significance of the phenomenon cannot be reduced to a ratio. Each episode of anti-Semitic vandalism, each assault, threat or harassment against an individual or an institution, causes serious anguish in the entire Jewish community and is a crime against the community.

Why does it happen? Professor Melvin Tumin, the Princeton University sociologist who was chairman of an ADL-sponsored task force of educators, law enforcement officials, social scientists and psychiatrists that met in New York shortly after ADL's 1980 audit was released, made this observation: the anti-Semitic nature of teenage vandalism can be attributed to "the transmission belts coming from families and other institutions where resentment of Jews is expressed." The increase may be just the "tip of an iceberg" and the overt expression of "a pervasive and deep-rooted anti-Semitism which has lain dormant" for years.

Many dangers to Jewish security, perhaps springing from these deep roots, are perceived in the current American milieu. A disturbingly high percentage of Americans all too readily accept anti-Semitic stereotypes about alleged Jewish control of the media or banking institutions, for example. There has been an injection of anti-Semitism into debates on U.S. foreign policy. A worldwide campaign of anti-Semitic propaganda has been conducted by the Soviet Union, various Arab regimes, and some Third World countries, exemplified in a number of United Nations resolutions, including that equating Zionism and racism. And a continuing peril confronts the State of Israel with whose destiny the fate of Jews everywhere is closely linked.

Episodes of anti-Semitic vandalism or harassment against Jews are not, in short, the only measure of anti-Semitism in our society. But they are an indication of a disturbing quotient of anti-Jewish hostility just beneath the surface of American life.

Society is beginning to respond to those manifestations of anti-Semitism which take the form of vandalism, assaults and harassment. Stricter laws are being enacted and law enforcement stepped up. Greater concern for the targets and victims of bias crimes is being shown. All are essential first steps.

In the long run, however, the deeper answers and the more relevant responses lie in the home, in the school, and in the church. Much more can be done in these crucial institutions of American life to educate youth about the evils of anti-Semitism and other forms of religious, racial and ethnic prejudice.

TENNESSEE AND THE NEW FEDERALISM

Mr. SASSER. Mr. President, the New Federalism proposal of the Reagan administration has engendered a great deal of interest in Tennessee and the Nation. I think that there is considerable support for the concept and the principles of the Federalism proposals put forward by the